

**FLASH 2001-17
(MAY 25, 2001)**

A. Federal Acquisition Circular (FAC) 97-25

The following two items are contained in **FAC 97-25**, which was published in the *Federal Register* on May 2, 2001 (66 FR 22082), and became effective on that date.

1. Preference for Performance-Based Contracting (FAR Case 2000-037)

This interim rule implements Section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106-398), the substance of which was summarized in the March 14, 2001, memorandum issued by the Acting Director, Office of Procurement and Assistance Management, Subject: Continued Emphasis on Performance-Based Contracting.

This interim rule-

- ☐ Moves the existing definition of *Performance-Based Contracting* from FAR 37.101 to FAR 2.101 and revises it to include the substance of the definition in paragraph (e) of Section 821; and
- ☐ Revises FAR 37.102, Policy, to explicitly state that performance-based contracting is the preferred method for acquiring services and to enumerate the order of precedence established by Section 821.

2. Contractor Personnel in the Procurement of Information Technology Services (FAR Case 2000-609)

The interim rule implements Section 813 of Pub. L. 106-398. Section 813 prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of information technology services, unless-

- (a) the contracting officer first determines that the needs of the agency cannot be met without such requirement; or
- (b) the needs of the agency require the use of a type of contract other than a performance-based contract.

B. Federal Acquisition Circular (FAC) 97-26

The following three items are in **FAC 97-26**, which was published in the *Federal Register* on May 16, 2001(66 FR 27406), and became effective on that date.

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1. Electronic Commerce in Federal Procurement (FAR Case 1997-304)

This interim rule:

- ☐ Further implements Section 850 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85), by designating a single point of universal electronic public access to Governmentwide procurement opportunities (the “Governmentwide Point of Entry” or “GPE”).
 - ➔ In general, Section 850 calls for the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems. Section 850 also eliminated the statutory preference for the Federal Acquisition Computer Network (FACNET) computer architecture in conducting transactions electronically that was prescribed in the Federal Acquisition Streamlining Act of 1994.
 - ➔ An interim rule implementing Section 850 was first published (63 FR 58590) on October 30, 1998. The first interim rule revised the FAR to promote the use of cost-effective procedures and processes that employ electronic commerce in the conduct and administration of Federal procurement systems; and require Federal procurement systems that employ electronic commerce to apply nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information.
 - ➔ Public comments on the first interim rule were received from 28 respondents. These comments were considered in the development of this second interim rule contained in FAC 97-26.
- ☐ Implements Section 810 of Pub. L. 106-398. Section 810 allows agencies to provide access to notices through the GPE, or by publishing them in the Commerce Business Daily (CBD).
 - ➔ This rule designates Federal Business Opportunities (“FedBizOpps”) as the GPE and the principal venue for procurement notices.
 - ➔ Agencies must begin transmitting notices to “FedBizOpps” no later than October 1, 2001, and will no longer be required to provide notice in the CBD after January 1, 2002.

Reference is made to the joint memorandum issued by the DOE and NNSA Directors of Procurement and Assistance Management, dated April 3, 2001, Subject: Implementation of Electronic Commerce Initiatives. Information concerning the

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Department's implementation of this rule may be directed to Doug Baptist, Acting Director, Information Management Systems Division, Office of Management Systems and Services, at (202) 586-0813.

2. Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects (FAR Case 2001-016)

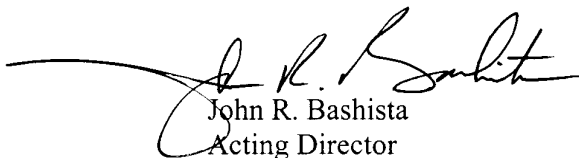
This interim rule amends the FAR to implement Executive Order 13202 which prescribes that agencies may not require or prohibit offerors, contractors, or subcontractors from entering into or adhering to agreements with one or more labor organizations. It also permits agency heads to exempt a project from the requirements of the Executive Order under certain circumstances.

Implementing Departmental guidance is currently being developed by the Office of Procurement and Assistance Policy.

3. Executive Order 13204, Revocation of Executive Order on Nondisplacement of Qualified Workers Under Certain Contract (FAR Case 2001-017)

This interim rule amends the FAR to implement Executive Order 13204. Executive Order 13204 revoked Executive Order 12933 titled, "Nondisplacement of Qualified Workers Under Certain Contracts," and requires that any rules implementing Executive Order 12933 be rescinded. Accordingly, this rule amends the FAR by removing FAR subpart 22.12, Nondisplacement of Qualified Workers Under Certain Contracts.

Questions concerning this Flash may be directed to Denise Wright at (202) 586-6217, or by email at: denise.wright@pr.doe.gov.


John R. Bashista
Acting Director

cc:
PPAG Members